

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MIGUEL C. CASTANEDA,)	Civil No. 14cv01949 GPC (RBB)
)	
Petitioner,)	REPORT AND RECOMMENDATION
)	DENYING PETITION FOR WRIT OF
v.)	HABEAS CORPUS AND ORDER
)	DENYING REQUEST FOR
W.L. MONTGOMERY, Warden, et)	EVIDENTIARY HEARING
al.,)	[ECF NO. 1]
)	
Respondents.)	
_____)	

Petitioner Miguel C. Castaneda, a state petitioner proceeding pro se, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 on August 20, 2014 [ECF No. 1]. There, Castaneda alleges that the trial court abused its discretion by revoking his probation. (Pet. 6, ECF No. 1.)¹ Second, Petitioner contends that the trial court improperly increased his restitution fines after his probation was revoked. (Id. at 7.)

The Respondent, W.L. Montgomery, filed an Answer and Notice of Lodgment on February 3, 2015 [ECF Nos. 9, 10]. Castaneda filed a "Tr[a]verse" (hereinafter, the "Traverse") on April 6, 2015 [ECF

¹ The Court will cite to all documents using the page numbers assigned by the electronic case filing system.

1 No. 13]. In the Traverse, Petitioner argues for the first time
2 that his due process rights were violated when his probation was
3 revoked. (Traverse 9-11, ECF No. 13.) For the reasons discussed
4 below, the Petition [ECF No. 1] should be **DENIED**.

5 **I. FACTUAL AND PROCEDURAL BACKGROUND**

6 In March of 2010, Petitioner took a homeless man's fishing
7 pole and struck him with it. (Lodgment No. 6, People v. Castaneda,
8 No. D062947, slip op. at 2 (Cal. Ct. App. Oct. 3, 2013).) A
9 witness criticized Castaneda for doing so; Petitioner then beat the
10 witness in the face with a pipe. (Id.) Castaneda was subsequently
11 charged with assault with a deadly weapon, dissuading a witness by
12 force or threat, and making a criminal threat. (Id.) Petitioner
13 pleaded guilty to assault with a deadly weapon in May of 2011.
14 (Id. at 3.) The remaining counts were dismissed. (Id.)

15 Castaneda was placed on probation in June of 2011 on condition
16 that he (1) serve 365 days in jail, (2) get "treatment and
17 therapy," and (3) stop using drugs and alcohol. (Id.) Petitioner
18 was later alleged to have violated his probation, and on October
19 10, 2012, an evidentiary hearing was held. (Id.) Castaneda's
20 probation officer testified at the hearing that Petitioner had
21 tested positive for methamphetamine and failed to comply with other
22 conditions of his probation. (Id.)

23 At the hearing, Petitioner requested that he be placed in a
24 residential treatment program to help address his substance abuse
25 issues. (Id. at 4.) Instead, the court revoked his probation and
26 sentenced him to twelve years in prison. (Id. at 1.) The
27 superior court also imposed fines of \$2,400 each for restitution
28 and probation revocation. (Id. at 1-2.) The fines were in

1 addition to two fines of \$200 each that had previously been imposed
2 for the same purposes in June of 2011. (Id. at 2.)

3 Castaneda appealed the sentence, requesting that the
4 California Court of Appeal remand the case because "the failure to
5 reinstate probation after the revocation, under the circumstances
6 existing at the time the final order was made, was an abuse of
7 discretion." (Lodgment No. 1, Appellant's Opening Brief at 12,
8 People v. Castaneda, No. D062947 (Cal. Ct. App. Oct. 3, 2013).)²
9 Petitioner also requested that the court of appeal modify the fine
10 amount owed. (Id. at 15-16.)

11 On October 3, 2013, the California Court of Appeal struck the
12 increased fines but affirmed the remainder of the superior court's
13 judgment. (See Lodgment No. 6, People v. Castaneda, No. D062947,
14 slip op. at 6.)

15 The court, id. at 5, explained:

16 Castaneda has not made a showing the court abused its
17 discretion in declining to reinstate him on probation.
18 It was not irrational for the court to withdraw its grant
19 of clemency in light of Castaneda's repeated failure to
20 comply with several probation requirements. On this
21 record, the court reasonably found Castaneda's latest
22 pledge to comply with the probation terms unavailing.

21 Castaneda filed a petition for review in the California
22 Supreme Court, which was denied on December 18, 2013, without
23 citation or comment. (Lodgment No. 8, Petition for Review, People
24 v. Castaneda, No. S214550 (Cal. Dec. 18, 2013); Lodgment No. 7,
25 People v. Castaneda, No. S214550, order at 1 (Cal. Dec. 18, 2013).)

27
28 ² Because Lodgment No. 1 is not consecutively paginated, the
Court has paginated the document and will cite to it using the
assigned page numbers.

II. STANDARD OF REVIEW

The Antiterrorism and Effective Death Penalty Act ("AEDPA"), 28 U.S.C. § 2244, applies to all federal habeas petitions filed after April 24, 1996. Woodford v. Garceau, 538 U.S. 202, 204 (2003) (citing Lindh v. Murphy, 521 U.S. 320, 326 (1997)). AEDPA sets forth the scope of review for federal habeas corpus claims:

The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

28 U.S.C.A. § 2254(a) (West 2006); see Reed v. Farley, 512 U.S. 339, 347 (1994); Hernandez v. Ylst, 930 F.2d 714, 719 (9th Cir. 1991). Because Castaneda's Petition was filed on August 20, 2014, AEDPA applies to this case. See Woodford, 538 U.S. at 204.

Section 2254(d) reads as follows:

An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim-

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C.A. § 2254(d).

To present a cognizable federal habeas corpus claim, a state prisoner must allege his conviction was obtained "in violation of the Constitution or laws or treaties of the United States." 28 U.S.C.A. § 2254(a). A petitioner must allege the state court

1 violated his federal constitutional rights. Hernandez, 930 F.2d at
2 719; Jackson v. Ylst, 921 F.2d 882, 885 (9th Cir. 1990); Mannhalt
3 v. Reed, 847 F.2d 576, 579 (9th Cir. 1988).

4 A federal district court does "not sit as a 'super' state
5 supreme court" with general supervisory authority over the proper
6 application of state law. Smith v. McCotter, 786 F.2d 697, 700
7 (5th Cir. 1986); see also Lewis v. Jeffers, 497 U.S. 764, 780
8 (1990) (holding that federal habeas courts must respect a state
9 court's application of state law); Jackson, 921 F.2d at 885
10 (explaining that federal courts have no authority to review a
11 state's application of its law). Federal courts may grant habeas
12 relief only to correct errors of federal constitutional magnitude.
13 Oxborrow v. Eikenberry, 877 F.2d 1395, 1400 (9th Cir. 1989)
14 (stating that federal habeas courts are not concerned with errors
15 of state law "unless they rise to the level of a constitutional
16 violation").

17 The Supreme Court, in Lockyer v. Andrade, 538 U.S. 63 (2003),
18 stated that "AEDPA does not require a federal habeas court to adopt
19 any one methodology in deciding the only question that matters
20 under § 2254(d)(1) -- whether a state court decision is contrary
21 to, or involved an unreasonable application of, clearly established
22 Federal law." Id. at 71. In other words, a federal court is not
23 required to review the state court decision de novo. Id. Rather,
24 a federal court can proceed directly to the reasonableness analysis
25 under § 2254(d)(1). Id.

26 The "novelty in . . . § 2254(d)(1) is . . . the reference to
27 'Federal law, as determined by the Supreme Court of the United
28 States.'" Lindh v. Murphy, 96 F.3d 856, 869 (7th Cir. 1996) (en

1 banc), rev'd on other grounds, 521 U.S. 320 (1997). Section
 2 2254(d)(1) "explicitly identifies only the Supreme Court as the
 3 font of 'clearly established' rules." Id. "A state court decision
 4 may not be overturned on habeas review, for example, because of a
 5 conflict with Ninth Circuit-based law" Moore v. Calderon,
 6 108 F.3d 261, 264 (9th Cir. 1997). "[A] writ may issue only when
 7 the state court decision is 'contrary to, or involved an
 8 unreasonable application of,' an authoritative decision of the
 9 Supreme Court." Id. (citing Childress v. Johnson, 103 F.3d 1221,
 10 1224-26 (5th Cir. 1997); Baylor v. Estelle, 94 F.3d 1321, 1325 (9th
 11 Cir. 1996)).

12 Furthermore, with respect to the factual findings of the trial
 13 court, AEDPA provides:

14 In a proceeding instituted by an application for a
 15 writ of habeas corpus by a person in custody pursuant to
 16 the judgment of a State court, a determination of a
 17 factual issue made by a State court shall be presumed to
 be correct. The applicant shall have the burden of
 rebutting the presumption of correctness by clear and
 convincing evidence.

18 28 U.S.C.A. § 2254(e)(1).

19 III. DISCUSSION

20 A. Claim One: Improper Revocation of Probation

21 In his Petition, Castaneda alleges that the superior court
 22 abused its discretion when it revoked his probation and sentenced
 23 him to prison. (See Pet. 6, ECF No. 1.) At the October 31, 2012
 24 evidentiary hearing, Petitioner argued that because he was seeking
 25 help for his substance abuse issues, he should remain on probation
 26 and be placed in a drug treatment program. (Id.) Castaneda
 27 explained to the judge that he had contacted several drug treatment
 28 facilities and had been accepted into the House of Metamorphosis.

1 (Id.) Petitioner contends that the denial of his request for
2 probation should be reviewed for abuse of discretion. (Id.)

3 In the Answer, Warden Montgomery asserts that because
4 Castaneda challenges the application of state law, federal habeas
5 relief is not available. (Answer Attach. #1 Mem. P. & A. 7-8, ECF
6 No. 9 (citing Estelle v. McGuire, 502 U.S. 62, 67-68 (1991)).)
7 Even if this Court could examine this state law issue, Respondent
8 maintains that this Court should find that the superior court acted
9 within its discretion by revoking probation because Petitioner had
10 a long criminal history. (Id. at 10-12.)

11 Montgomery insists that prior to May 2011, when Castaneda
12 pleaded guilty to assault with a deadly weapon, he had a history of
13 criminal conduct that included convictions for having sex with a
14 minor three years younger, illegal drug use, and violating gang
15 injunction orders. (Id. at 10.) "Before this current case,
16 Castaneda had violated probation nine times and parole six times."
17 (Id.) While on probation, he tested positive for drugs on several
18 occasions and was arrested for driving under the influence. (Id.
19 at 10-11.) In light of his criminal history, Montgomery argues
20 that the court did not abuse its discretion in revoking
21 Petitioner's probation. (Id. at 11-12.)

22 Although Castaneda does not allege a due process claim in his
23 Petition, (see Pet. 1-10, ECF No. 1), Montgomery submits in the
24 Answer that misapplication of state sentencing law may violate
25 federal due process if the sentence is arbitrary and capricious.
26 (Answer Attach. #1 Mem. P. & A. 7-8, ECF No. 9 (citing Richmond v.
27 Lewis, 506 U.S. 40, 50 (1992)).) For the reasons explained above,
28

1 Respondent insists that the sentence was reasonable and did not
2 violate Petitioner's right to due process. (Id. at 12.)

3 Montgomery concedes that under some circumstances,
4 misapplication of state sentencing law may violate due process if
5 the law creates a liberty interest. (Id. at 8 (citing Hewitt v.
6 Helms, 459 U.S. 460 (1983)).) Respondent argues that when a
7 liberty interest is created by a state statute, federal courts are
8 limited to determining whether the state court followed procedures
9 relating to notice and a probationer's right to a hearing. (Id. at
10 9.) Montgomery asserts that Petitioner was not deprived of either.
11 (Id. at 9-10.)

12 In the Traverse, Castaneda argues for the first time that his
13 due process rights were violated when the trial court revoked his
14 probation under California Penal Code section 1203.2. (Traverse 9-
15 11, ECF No. 13.) Further, Petitioner maintains that section 1203.2
16 creates a liberty interest in probation modification. (Id. at 9.)
17 Castaneda claims that the trial court "acted on a whimsical
18 reaction" when it admonished Petitioner and his counsel during
19 sentencing. (Id. at 10.) These admonishments, Castaneda insists,
20 demonstrate that the trial court's decision to revoke probation
21 "falls outside the bounds of reason and constitutes unsound
22 judgment in the context of rehabilitation for substance abusers."
23 (Id. (citation omitted).) Petitioner contends that his probation
24 should not have been revoked because he was sincere in his efforts
25 to seek treatment for his substance abuse issues. (Id. at 11.)
26 Finally, Castaneda argues that the California Court of Appeal
27 "failed to discuss the accuracy of the information the court relied
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1 on and whether it complied with due process." (Id. (citation
2 omitted).)

3 **1. Alleging a state law claim**

4 Castaneda contends that the trial court abused its discretion
5 under California Penal Code section 1203.2 by revoking his
6 probation. (See Pet. 6, ECF No. 1; Traverse 10-11, ECF No. 13.)
7 Yet, in order to invoke federal habeas corpus jurisdiction, a
8 prisoner must assert that his custody violates federal law. See 28
9 U.S.C.A. § 2254(a). Federal habeas relief is not available for
10 violations of state law. See Estelle, 502 U.S. at 67-68.

11 Because Castaneda's claim is based on the misapplication of
12 state law, it is not cognizable on federal habeas review. See
13 Martin v. Solem, 801 F.2d 324, 331 (8th Cir. 1986) ("[S]tate
14 prisoners' claims of error involving sentencing, parole, probation,
15 and revocation of probation or parole are matters governed by state
16 law that are not cognizable in federal habeas corpus proceedings.")
17 (emphasis added) (citations omitted); Perez v. Ochoa, No. CV 11-
18 1178-ODW (DTB), 2012 WL 3018057, at *7 (C.D. Cal. June 11, 2012)
19 ("[T]o the extent that petitioner is claiming that the sentencing
20 court's revocation of his probation at the summary revocation
21 hearing violated state law, his claim is not cognizable on federal
22 habeas review.") (citations omitted). For these reasons,
23 Petitioner's state law claim should be **DENIED**.

24 **2. Failing to allege a federal claim**

25 Petitioner did not raise a due process claim in the Petition
26 or in any state court filing. (See generally Pet. 6, ECF No. 1;
27 Lodgment No. 1, Appellant's Opening Brief at 12-15, People v.
28 Castaneda, No. D062947; Lodgment No. 8, Petition for Review at

1 7-11, People v. Castaneda, No. S214550.) In the Answer, however,
2 Respondent argues that Castaneda's claim lacks merit because "it
3 principally challenges the application of state law by a state
4 court" (Answer Attach. #1 Mem. P. & A. 7, ECF No. 9.)
5 Montgomery continues, "In general, a misapplication of a state
6 sentencing law is not a violation of federal due process rights."
7 (Id. at 7-8.) Following Respondent's lead, in the Traverse,
8 Petitioner argues that his due process rights were violated.
9 (Traverse 9-11, ECF No. 13.)

10 As a preliminary matter, a traverse is not the proper pleading
11 to raise an additional ground for relief. See Cacoperdo v.
12 Demosthenes, 37 F.3d 504, 507 (9th Cir. 1994) ("In order for the
13 state to be properly advised of additional claims, they should be
14 presented in an amended petition, or . . . in a statement of
15 additional grounds."). On this basis alone, the Court has the
16 discretion not to consider this claim. See Williamson v. Virga,
17 No. ED CV 12-1540-BRO (PLA), 2013 U.S. Dist. LEXIS 133034, at *25
18 n. 8 (C.D. Cal. July 16, 2013) (citing Brown v. Roe, 279 F.3d 742,
19 745-46 (9th Cir. 2002)) (deciding not to consider claim raised for
20 the first time in the traverse).

21 Moreover, "[a]n application for a writ of habeas corpus on
22 behalf of a person in custody pursuant to the judgment of a State
23 court shall not be granted unless it appears that the applicant has
24 exhausted the remedies available in the courts of the State." 28
25 U.S.C.A. § 2254(b)(1)(A). In order "to exhaust a habeas claim, a
26 petitioner must properly raise it on every level of direct review."
27 Casey v. Moore, 386 F.3d 896, 916 (9th Cir. 2004) (citing Ortberg
28 v. Moody, 961 F.2d 135, 137 (9th Cir. 1992)). The exhaustion

1 requirement is not satisfied simply because the "due process
2 ramifications of an argument might be self evident." Gatlin v.
3 Madding, 189 F.3d 882, 888 (9th Cir. 1999) (citing Anderson v.
4 Harless, 459 U.S. 4, 7 (1982)) (internal quotation marks omitted).
5 Because Petitioner's due process claim (1) was not raised in the
6 Petition and (2) is unexhausted, this Court should not consider it.
7 See Garcia v. Dexter, No. EDCV 08-00253-JFW (MAN), 2009 WL 178755,
8 at *5, n.6 (C.D. Cal. Jan. 26, 2009) ("Petitioner did not raise
9 these contentions in his Petition, nor did he present them to the
10 state courts. The Court will not consider claims raised for the
11 first time in a Reply, which are, moreover, unexhausted.") (citing
12 Cacoperdo, 37 F.3d at 507).

13 Castaneda did not exhaust a federal due process claim by
14 presenting it to the California courts. See Duncan v. Henry, 513
15 U.S. 364, 365-66 (1995). Accordingly, in the last reasoned state
16 court opinion addressing the claim that the superior court abused
17 its discretion by revoking Castaneda's probation, the California
18 Court of Appeal limited its discussions to the application of state
19 law. (See People v. Castaneda, No. D062947, slip op. at 4-5.)
20 Nevertheless, in the Answer to the Petition, the Respondent states,
21 "Castaneda has exhausted state remedies for his claims by
22 presenting a petition for review to the California Supreme Court."
23 (Answer 2, ECF No. 9.)

24 In an analogous case, the Respondent "did not seek to dismiss
25 the pending Petition as unexhausted, but instead stated that
26 Petitioner 'appears to have exhausted his state remedies by
27 presenting his claim to the California Supreme Court in a petition
28 for review[,] and argued the Petition should be denied on the

1 merits." Holmes v. Frauenheim, Case No. SACV 14-1591 GHK (SS),
2 2015 U.S. Dist. LEXIS 60889, at *8 (C.D. Cal. May 8, 2015).
3 Respondent Montgomery has done the same here. (See Answer 2, ECF
4 No. 9; id. Attach. #1 Mem. P. & A. Supp. Answer 5-12.) The court
5 in Holmes concluded that "Respondent expressly waived the
6 exhaustion requirement" Holmes, 2015 U.S. Dist. LEXIS
7 60889, at *8; accord Mann v. Ryan, 774 F.3d 1203, 1212 n.2 (9th
8 Cir. 2014) ("[T]he state expressly waived the exhaustion
9 requirement when, in its answer to [the] amended habeas petition,
10 it stated that Mann exhausted [the claim of ineffective assistance
11 of counsel] and it responded at length to Mann's [arguments on the
12 merits].") Likewise, Montgomery has expressly waived the
13 exhaustion requirement for the claim that Castaneda's due process
14 rights were violated when the state court revoked his probation.

15 The claim Castaneda has alleged in his Petition and argued in
16 his Traverse is that the superior court abused its discretion by
17 revoking Castaneda's probation and sentencing him to his original
18 twelve-year sentence. (See Pet. 6, ECF No. 1; Traverse 8-11, ECF
19 No. 13.) This claim is not a federal one. See Sharper v. Ayers,
20 No. C 07-0351 JSW (PR), 2007 U.S. Dist. LEXIS 56813, at *1 (N.D.
21 Cal. July 27, 2007). There, probation had been revoked by the
22 state court, and Sharper was sentenced to ten years in custody. He
23 challenged the "constitutional validity" of his state sentence.
24 Id. Judge White allowed Sharper to proceed on other claims but
25 held that the "claim that the trial court's decision to revoke
26 probation and sentence Petitioner to ten years in state prison was
27 an abuse of discretion does not present a federal claim." Id. at
28 *2. The same rationale applies to Castaneda's claim.

1 Any attempt to read the alleged abuse of discretion as a claim
2 that Castaneda's due process rights were violated does not succeed.
3 The basis for a procedural due process claim is nonexistent. The
4 facts contained in the Petition, even if supplemented by those in
5 the Traverse, do not suffice to allege anything more than a claimed
6 abuse of discretion.

7 Castaneda fails to develop a nexus between his right to due
8 process and the facts of this case. (See Traverse 9-11, ECF No.
9 13.) His conclusory attempt to transform his state-law claim into
10 a federal claim merely by asserting that the state courts violated
11 his Fourteenth Amendment right to due process should be rejected.
12 See Johnson v. Davis, No. CV 14-3056-JVS (MAN), 2014 WL 2586883, at
13 *5 (C.D. Cal. June 9, 2014) ("Petitioner's attempt to transform his
14 claim of an alleged misapplication of Section 1170.126 into a claim
15 of a violation of his federal constitutional rights, by conclusory
16 references to 'due process' and 'equal protection,' is
17 unavailing."); Bradley v. Warden, No. CV 11-1128-JHN (SP), 2012 WL
18 1577778, at *3 (C.D. Cal. Feb. 27, 2012), report and recommendation
19 adopted by 2012 WL 1598013 (C.D. Cal. May 3, 2012) ("Petitioner's
20 addition of the phrases 'due process' and 'Fourteenth Amendment' to
21 his state law claims does not transform them into federal ones.")
22 (citing Langford v. Day, 110 F.3d 1380, 1389 (9th Cir. 1996)). For
23 all these reasons, Petitioner's first claim for habeas relief
24 should be **DENIED**.

25 **B. Claim Two: Improper Restitution Fines**

26 Next, Castaneda claims that the increased restitution fines
27 imposed after his probation was revoked were improper and must be
28 stricken. (Pet. 7, ECF No. 1.) Petitioner explains that the court

1 imposed fines of \$200 each for restitution and probation revocation
2 in June of 2011. (Id.) After his probation was revoked, the court
3 increased these fines to \$2,400 each. (Id.) Castaneda argues that
4 the new fines were unwarranted "[b]ecause a restitution fine
5 imposed when probation is granted survives the revocation of
6 probation." (Id.) Thus, the superior court did not have the
7 authority to impose additional fines after his probation was
8 revoked. (Id.)

9 In the Answer, Respondent alleges that this claim is moot.
10 (Answer Attach. #1 Mem. P. & A. 12, ECF No. 9.) Montgomery
11 maintains that a case or controversy does not exist because the
12 California Court of Appeal granted Castaneda relief on this claim.
13 (Id.; see Lodgment No. 6, People v. Castaneda, No. D062947, slip
14 op. at 5.) Petitioner does not dispute this in his Traverse. (See
15 Traverse 9-11, ECF No. 13.)

16 Castaneda first raised this claim in the brief he filed with
17 the California Court of Appeal. (Lodgment No. 1, Appellant's
18 Opening Brief at 15-16, People v. Castaneda, No. D062947.) The
19 court of appeal agreed that the additional restitution fines
20 imposed in October of 2012 were improper. (Lodgment No. 6, People
21 v. Castaneda, No. D062947, slip op. at 5.) The appellate court
22 struck the additional fines. (Id.)

23 Under Article III, § 2 of the U.S. Constitution, a claim is
24 moot when it no longer presents a case or controversy. See Spencer
25 v. Kemna, 523 U.S. 1, 7 (1998). Because the California Court of
26 Appeal already granted Castaneda relief by striking the additional
27 fines, this second claim should be **DENIED as moot**. See Walker v.
28 Clark, No. CV 08-5587-CJC (JEM), 2010 WL 1643580, at *16 (C.D. Cal.

1 Feb. 18, 2010), report and recommendation adopted by 2010 WL
2 1641372 (C.D. Cal. Apr. 20, 2010) ("In the specific context of
3 habeas corpus petitions, the case or controversy requirement
4 mandates a finding of mootness if the petitioner has received the
5 relief requested in the petition or the court is unable to provide
6 the petitioner with the relief sought.") (citation omitted).

7 **C. Request for an Evidentiary Hearing**

8 Finally, in conclusory fashion in his Traverse, Castaneda
9 requests an evidentiary hearing. (Traverse 6, ECF No. 13.)
10 Petitioner does not present any facts that would warrant an
11 evidentiary hearing. See Insyxiengmay v. Morgan, 403 F.3d 657, 670
12 (9th Cir. 2005) (stating that the petitioner must demonstrate he
13 failed to develop the factual basis of his claims in state court
14 and that his request comes within one of two exceptions in §
15 2254(e)(2)(A) and (B)). If the factual basis for the claim was
16 developed in state court, the federal court considers whether an
17 evidentiary hearing is appropriate or required under Townsend v.
18 Sain, 372 U.S. 293 (1963). See Baja v. Ducharme, 187 F.3d 1075,
19 1078 (9th Cir. 1999) (citing Cardwell v. Greene, 152 F.3d 331, 337
20 (4th Cir. 1998)). Castaneda has not carried his burden. His
21 request for an evidentiary hearing is therefore **DENIED**.

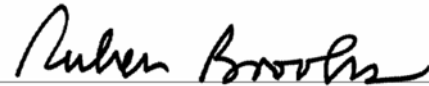
22 **IV. CONCLUSION**

23 For the reasons state above, Castaneda's Petition [ECF No. 1]
24 should be **DENIED**. His request for an evidentiary hearing is
25 **DENIED**. This Report and Recommendation will be submitted to the
26 United States District Judge assigned to this case, pursuant to the
27 provisions of 28 U.S.C. § 636(b)(1). Any party may file written
28 objections with the Court and serve a copy on all parties on or

1 before September 1, 2015. The document should be captioned
2 "Objections to Report and Recommendation." Any Reply to the
3 objections shall be served and filed on or before September 15,
4 2015. The parties are advised that failure to file objections
5 within the specified time may waive the right to appeal the
6 district court's order. Martinez v. Ylst, 951 F.2d 1153, 1157 (9th
7 Cir. 1991).

8 IT IS SO ORDERED.

9
10 Dated: August 4, 2015



Ruben B. Brooks
United States Magistrate Judge

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13 cc: Judge Curiel
14 All Parties of Record
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